

JUDGE MARKER 08 CIV 6542

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2008 Civ.

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MUND & FESTER GMBH & CO.KG a/s/o AGS
LTDA. and WILLIAM H. KOPKE, JR. INC.,

COMPLAINT

Plaintiff,

- against -

LAN AIRLINES, S.A. (formerly know as LAN
CHILE)

Defendant.
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Plaintiff, MUND & FESTER GMBH & CO.KG a/s/o AGS LTDA, by its attorneys,
Casey & Barnett, LLC, for its Complaint alleges upon information and belief as follows:

1. This action arises out of the Warsaw Convention, a Treaty to which the United States is a signatory. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

2. Plaintiff, MUND & FESTER GMBH & CO.KG (hereinafter M&F" or "Plaintiff") was and is a foreign corporation with an office and place of business located at Trostbrücke 4 20457 Hamburg, Germany and is the subrogated underwriter of fresh cherries owned by AGS LTDA., who was the shipper of said consignment of cherries, as more fully described below.

3. Defendant, LAN AIRLINES, S.A. (formerly know as LAN CHILE) (hereinafter "LAN"), was and is a foreign corporation with an office and place of business located at 6500 NW 22nd Street, Miami, Florida 33122 and at all relevant times was and is doing business within the jurisdiction of this Honorable Court.

4. This is a claim for damages sustained during transit to a consignment consisting of 673 cases of fresh cherries, with a total weight of 3,870 kg, which were delivered to the defendant and/or its agents in good order and condition in Santiago, Chile for air carriage to Miami, Florida, U.S.A. pursuant to LAN airway bill number 045-5601-3053 dated December 2, 2007.

5. When the cargo arrived in Miami, Florida, U.S.A., it was delivered to the consignee damaged.

6. The damages sustained to the aforementioned consignment of fresh cherries were caused solely by the negligence, carelessness, breach of contract and/or breach of bailment of the defendant, its employees, contractors, agents and servants, without any fault on the part of the plaintiff.

7. In accordance with the provisions of the Warsaw Convention, written notice of the loss was provided to defendants within the time set forth in the Convention.

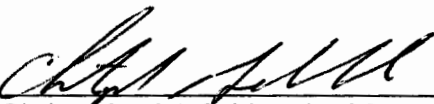
8. Plaintiff sues on its own behalf and as agent and trustee on behalf of any other person or parties who may now have or hereinafter acquire an interest in this action.

9. By reason of the forgoing, plaintiff has been damaged in the amount of \$29,000.00 as nearly as presently can be estimated; no part of which has been paid, although duly demanded.

WHEREFORE, plaintiff respectfully demands judgment in the amount of \$29,000.00, together with interest, costs, and disbursements, and such other and further relief as to the Court appears just and proper.

Dated: New York, New York
July 21, 2008
260-91

CASEY & BARNETT, LLC
Attorneys for Plaintiff

By: 
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